

MEMO# 27533

September 3, 2013

Treasury and IRS Issue Revenue Ruling Recognizing Same-Sex Marriages for all Federal Tax Purposes and Provide Retirement Plan Administrative Guidance

[27533]

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TO: PENSION MEMBERS No. 41-13
BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 28-13
OPERATIONS COMMITTEE No. 43-13
TRANSFER AGENT ADVISORY COMMITTEE No. 66-13
TAX COMMITTEE No. 26-13 RE: TREASURY AND IRS ISSUE REVENUE RULING RECOGNIZING SAME-SEX MARRIAGES FOR ALL FEDERAL TAX PURPOSES AND PROVIDE RETIREMENT PLAN ADMINISTRATIVE GUIDANCE

In response to the Supreme Court's holding in *U.S. v. Windsor*, the Treasury Department and Internal Revenue Service (IRS) issued Revenue Ruling 2013-17 providing that same-sex couples, legally married in jurisdictions that recognize their marriages, will be treated as married for federal tax purposes. [1] The Ruling applies regardless of whether the same-sex couple lives in a jurisdiction that recognizes same-sex marriage and is effective prospectively as of September 16, 2013. The Revenue Ruling appears consistent with previously issued Office of Personnel Management rules regarding the application of *Windsor*, as well as two recently reported district court cases. [2] Additionally, as discussed below, in a series of Frequently Asked Questions (FAQs) IRS addresses the obligations of retirement plans under the Revenue Ruling. [3] The Institute had discussed with senior Treasury and IRS officials the urgent need for guidance as a result of the *Windsor* decision and we are pleased that the guidance specifically addresses retirement plan administration.

Revenue Ruling 2013-17

Revenue Ruling 2013-17 provides guidance on the effect of the *Windsor* opinion on the IRS' interpretation of those provisions of the Internal Revenue Code (IRC) that refer to taxpayers' marital status. Specifically, the Ruling holds as follows:

1. For Federal tax purposes, the terms “spouse,” “husband and wife,” “husband,” and “wife” include an individual married to a person of the same sex if the individuals are lawfully married under state law, and the term “marriage” includes such a marriage between individuals of the same sex. The Ruling states that “[t]his interpretation is consistent with the Supreme Court’s statements about the Code in Windsor, avoids the serious constitutional questions that an alternate reading would create, and is permitted by the text and purposes of the Code.”
2. For Federal tax purposes, the IRS adopts a general rule recognizing a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages. In reaching this conclusion, the Ruling discusses the serious administrative concerns that would be raised by implementation of a state-of-domicile rule in lieu of the rule adopted. Notably, the Ruling states that a rule of recognition based on the state of a taxpayer’s current domicile would create substantial burdens for employers and administrators of employee benefit plans. As an example, the Ruling notes that the need for and validity of spousal elections, consents, and notices could change each time an employee, former employee, or spouse moved to a state with different marriage recognition rules. The Ruling also notes that a state-of-domicile rule would make administration of certain rules, such as those governing required distributions under section 401(a)(9), “especially challenging.”
3. For Federal tax purposes, the terms “spouse,” “husband and wife,” “husband,” and “wife” do not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state, and the term “marriage” does not include such formal relationships.

The Ruling holds that it may be relied upon by taxpayers retroactively with respect to any employee benefit plan or arrangement or any benefit provided thereunder only for purposes of filing original returns, amended returns, adjusted returns, or claims for credit or refund of an overpayment of tax concerning employment tax and income tax with respect to employer-provided health benefits or fringe benefits that were provided by the employer and are excludable from income under the IRC based on an individual’s marital status. The Ruling further states that the IRS intends to issue further guidance on the retroactive application of the Court’s ruling in Windsor to other employee benefit plan matters and employee benefit plan arrangements, and that the guidance will take into account the potential consequences of retroactive application to all taxpayers involved, including the plan sponsor, the plan or arrangement, employers, affected employees and beneficiaries.

Frequently Asked Questions

Concurrent with the issuance of the Ruling, the IRS provided guidance through the issuance of two sets of FAQs – one for individuals of the same sex who are married under state law [\[4\]](#) and one for registered domestic partners and individuals in civil unions. [\[5\]](#) The FAQs for same-sex married individuals include four questions and answers (i.e., FAQs 16-19) relating to qualified retirement plan administration.

FAQ 16 relates to the application of the Ruling to qualified retirement plans and provides as follows:

- A qualified retirement plan must treat a same-sex spouse as a spouse for purposes of satisfying the federal tax laws relating to qualified retirement plans.

- For purposes of satisfying the federal tax laws relating to qualified retirement plans, a qualified retirement plan must recognize a same-sex marriage that was validly entered into in a jurisdiction whose laws authorize the marriage, even if the married couple lives in a domestic or foreign jurisdiction that does not recognize the validity of same-sex marriages.
- A person who is in a registered domestic partnership or civil union is not considered to be a spouse for purposes of applying the federal tax law requirements relating to qualified retirement plans, regardless of whether that person's partner is of the opposite or same sex.

FAQ 17 provides two examples of the consequences of the above rules for qualified retirement plans. One example states that, in a qualified defined contribution plan that provides that the participant's account must be paid to the participant's spouse upon the participant's death, the plan must pay the death benefit to the same-sex surviving spouse unless the same-sex spouse consents to a different beneficiary.

FAQ 18 provides that the Ruling is applicable to qualified retirement plans as of September 16, 2013. The guidance explains that, although the Ruling allows a taxpayer to file amended returns that relate to prior periods with respect to other matters, this does not apply with respect to matters relating to qualified retirement plans, as "[t]he IRS has not yet provided guidance regarding the application of Windsor and these rules to qualified retirement plans with respect to periods before September 16, 2013."

FAQ 19 states that the IRS intends to issue further guidance on how qualified retirement plans and other tax-favored retirement arrangements must comply with Windsor and the Ruling. The IRS states that future guidance will address the following, among other issues:

- Plan amendment requirements (including the timing of any required amendments); and
- Any necessary corrections relating to plan operations for period before future guidance is issued.

The FAQs relating to domestic partners and civil unions also address one IRA issue. FAQ 24 addresses the application of community property laws in determining compensation for purposes of the IRA deduction. The FAQ explains that the federal tax laws governing the IRA deduction specifically provide that the deduction is computed separately for each individual and are applied without regard to any community property laws. Thus, each individual determines whether he or she is eligible for an IRA deduction by computing his or her individual compensation (determined without application of community property laws).

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endnotes

[1] Revenue Ruling 2013-17 is available here: <http://www.irs.gov/pub/irs-drop/rr-13-17.pdf>.

[2] For the Institute's summary of these two recent district court decisions, see [Memorandum](#) to Pension Members No. 40-13, Bank Trust and Retirement Advisory

Committee No. 24-13, Operations Committee No. 40-13, Transfer Agent Advisory Committee No. 6313 [27495], dated August 27, 2013.

[3] For the Institute's Memorandum on the impact of United States v. Windsor on retirement plans, see [Memorandum](#) to Pension Members No. 31-13, Bank, Trust and Retirement Advisory Committee No. 20-13, Operations Committee No. 32-13, Transfer Agent Advisory Committee No. 54-13 [27377], dated July 16, 2013.

[4] "Answers to Frequently Asked Questions for Individuals of the Same Sex Who are Married Under State Law" is available here:
<http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples>.

[5] "Answers to Frequently Asked Questions for Registered Domestic Partners and Individuals in Civil Unions" is available here:
<http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Registered-Domestic-Partners-and-Individuals-in-Civil-Unions>.

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